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In Re: Annie L. Snyder
Chapter 7
Case No. 06-10973

LETTER DECISION AND ORDER

The contested matter before the court is the motion by the chapter 7 trustee, Christian H. Dribusch, Esq. (the “Trustee”), pursuant to § 522(a)¹ and Federal Rule of Bankruptcy Procedure 4003(b) for an order disallowing the exemption claimed by Anne L. Snyder (the “Debtor”) and requesting turnover pursuant to § 542. The court has jurisdiction over this core proceeding pursuant to 28 U.S.C. §§ 157(a), 157(b)(1), 157(b)(2)(A), (B), and 1334(b). The facts are not in dispute. The Debtor filed a chapter 7 petition on April 28, 2006. (No. 1.) The Debtor is a single mom with a minor son. (*Id.* Sch. I.) The Debtor scheduled “[l]ife insurance through Prudential Financial Policy No. 96-705-015” (the “Policy”) with a cash value of \$1,884.22 as an asset (*Id.* Sch B) and claimed it exempt pursuant to New York Insurance Law §3212 (*Id.* Sch C). At the meeting of creditors held pursuant to § 341, the Debtor testified that her sister is the beneficiary of the Policy. The Trustee filed his motion on July 11, 2006. The Trustee asserts that because the Policy was effectuated by the Debtor for the benefit of her sister, the Policy is

¹Unless otherwise noted, all statutory references herein are to the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) since the case was commenced after October 17, 2005, the effective date of BAPCPA.

not exempt as to the Debtor's creditors pursuant to New York Insurance Law § 3212, and the insurance proceeds should be turned over to him for administration. The Debtor filed opposition to the motion on August 1, 2006, asserting that her claimed exemption falls squarely within New York Insurance Law §3212. At the hearing held on August 9, 2006, the court set a briefing schedule. The Trustee was to file his memorandum of law on or before September 8, 2006, and the Debtor was to respond by September 22, 2006. A review of the court's docket indicates neither party filed a memorandum of law with the court.

The State of New York has "opted out" of the federal exemption statute pursuant to § 522(b)(1) and has enacted Debtor & Creditor Law § 282 et. seq. The objecting party, in this case the Trustee, bears the burden of proving that an exemption has not been properly claimed. Fed. R. Bankr. P. 4003(c); *In re Moore*, 177 B.R. 437 (Bankr. N.D.N.Y. 1994). For reasons unbeknownst to the court, the Trustee has not pursued his argument. Thus, the court concludes the Trustee has abandoned it. As such, the Trustee has not met his burden. Accordingly, the Trustee's objection to the claimed exemption is overruled.

It is SO ORDERED.

Dated: October 3, 2006

/s/ Robert E. Littlefield, Jr.

United States Bankruptcy Judge - N.D.N.Y.